



AN ACT CLARIFYING PRACTICES RELATED TO THE PRESERVATION AND DISPOSAL OF BIOLOGICAL EVIDENCE IN FELONY CRIMINAL CASES; AND AMENDING SECTION 46-21-111, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-21-111, MCA, is amended to read:

"46-21-111. Preservation and disposal of ~~scientific identification~~ biological evidence obtained in criminal proceeding. (1) ~~(a) The state~~ A law enforcement agency shall preserve ~~scientific identification~~ biological evidence that the ~~state agency~~ has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The state agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

~~(2)(b)~~ An agency may propose to dispose of ~~scientific identification~~ biological evidence before the expiration of the time period described in subsection (1)(a) if the ~~state agency~~ notifies the convicted person, and any the attorney of record for the convicted person, and the Montana chief public defender. The notification must include a description of the ~~scientific identification~~ biological evidence, a statement that the ~~state agency~~ will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within that the 120-day period, the state agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

~~(3)(c)~~ If a party objects to the disposition of the ~~scientific identification~~ biological evidence, the state agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of

the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

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